

**REMARKS**

**I. Status of Claims**

By this Amendment, Applicants amend claims 55 and 67. Claims 1-69 remain pending in this application.

In the Office Action of April 30, 2004,<sup>1</sup> claim 67 was objected to for minor informalities; claims 1-55 and 67-69 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter; claims 1-69 were rejected under 35 U.S.C. § 112, first paragraph, as based on a non-enabling disclosure; claims 1, 4-6, 9-15, 17-20, 24-27, 29-36, 43-47, 51-53, 56, 60-62, and 64-67 were rejected under 35 U.S.C. § 102(e) as anticipated by PCT International Publication No. WO 01/18674 A2 ("*Maloney*"); claims 2, 3, 7, 8, 16, 28, 37-42, 54, 55, 57, 58, 63, 68, and 69 were rejected under 35 U.S.C. § 103(a) as unpatentable over *Maloney* in view of U.S. Patent Application Publication No. 2003/0078854 ("*Shim*"); and claims 21-23 and 48-50 were rejected under 35 U.S.C. § 103(a) as unpatentable over *Maloney* and *Shim*. Applicants address the objection and rejections below.

**II. Objection to claim 67**

The Examiner objected to claim 67 for minor informalities. Applicants have amended claim 67 to address the noted informalities. Accordingly, the claim objection should be withdrawn.

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

### III. Rejection of claims 1-55 and 67-69 under 35 U.S.C. § 101

Applicants traverse the rejection of claims 1-55 and 67-69 under 35 U.S.C. § 101 for the following reasons.

According to the Examiner, claims 1-55 and 67-69 do not include recitations “in the technological arts” (OA at 2). The Examiner alleges that the claim recitations are “abstract ideas which can be performed mentally without interaction of a physical structure” (OA at 2). The Examiner concludes that the “claimed invention is directed to an abstract idea ...” and that the claims are therefore not permitted under 35 U.S.C. § 101. Applicants respectfully disagree.

According to the Federal Circuit, the inquiry of whether a claim is statutory focuses on “the essential characteristics of the subject matter, in particular, its practical utility.” *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 1375 (Fed. Cir. 1998). If a claim includes recitations that produce “a concrete, tangible and useful result,” the claim is not abstract and has practical utility. *See State Street*, 149 F.3d at 1373; *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358 (Fed. Cir. 1999). And if the claim is not abstract and has practical utility, it is statutory under 35 U.S.C. § 101.

Furthermore, Applicants point out that whether or not a process can be performed “without interaction of a physical structure” is not dispositive of determining whether a claimed process is statutory. In fact, the Federal Circuit indicated that arguing that process claims are not patentable subject matter because they lack physical limitations “reflects a misunderstanding of...[the] case law.” *AT&T*, F.3d at 1359.

Initially, Applicants point out that the Examiner failed to establish a *prima facie* showing that the claimed invention is an “abstract idea.” The Examiner’s conclusory statements that the claims do not “recite a limitation in the technological arts” and that the recitations “are abstract ideas which can be performed mentally without interaction of a physical structure” are wholly

unsupported by evidence and do not by themselves establish that the claims are abstract.

Because the Examiner failed to provide any evidence to support these allegations in the Office Action, the rejection of claims 1-55 and 67-69 under 35 U.S.C. § 101 should be withdrawn.

In addition, Applicants submit that claims 1-55 and 67-69 are not abstract but rather statutory. Claims 1-55 and 67-69 include recitations that produce “concrete, tangible and useful” results and therefore, despite the Examiner’s allegations, accomplish a practical application and are not abstract. *State Street*, 149 F.3d at 1375. For example, providing guidance . . . at least including beauty advice and being a function of at least some of . . . profile information and . . . [a] birth-related classification is a useful, non-abstract result that could facilitate, for example, implementation of a marketing initiative. Further, claims 1-55 and 67-69 have tangible applications within the technological arts (see Applicants Specification, e.g., pages 24-35).<sup>2</sup> And as explained above, whether or not the claims include physical limitations is not dispositive of determining whether a claimed process is statutory.

For at least the foregoing reasons, the rejection of claims 1-55 and 67-69 under 35 U.S.C. § 101 should be withdrawn.

#### **IV. Rejection of claims 1-69 under 35 U.S.C. § 112, first paragraph**

The Examiner alleged that claims 1-69 are “based on a disclosure which is not enabling” (OA at 3). Applicants traverse the rejection of claims 1-69 under 35 U.S.C. § 112, first paragraph, for at least the following reasons.

The test for enablement is whether the disclosure contains sufficient information to enable one reasonably skilled in the pertinent art to make and use the claimed invention without

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<sup>2</sup> In referring to the Specification, Applicants do not intend to limit the scope of the claims to the exemplary embodiments shown in the drawings and described in the specification. Rather, Applicants expressly affirm their entitlement to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

“undue experimentation.” M.P.E.P. § 2164.01. It is well-settled, however, that “[d]etailed procedures for making and using the invention may not be necessary if the description of the invention itself is sufficient to permit those skilled in the art to make and use the invention.”

M.P.E.P. § 2164. The issue in this case is whether a skilled artisan, given the teachings of the specification and what is known in the prior art, could make and use the invention without undue experimentation.

Initially, Applicants submit that the Examiner failed to meet the initial burden in rejecting the claims. As the M.P.E.P. makes clear, “[i]n order to make a rejection, the examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. M.P.E.P. § 2164.04 (internal citations omitted). The Examiner’s conclusions regarding enablement should be based on specific findings of fact that are supported by evidence. *See id.* As M.P.E.P. § 2164.04 articulates, “the minimal requirement is for the examiner to give reasons for the uncertainty of the enablement.” M.P.E.P. § 2164.04 (internal citations omitted).

In this case, the Examiner alleged that “the connection between [an] *astrological horoscope sign* and a *beauty product* is not clear” (OA at 3). The Examiner further alleged (OA at 3):

[t]he functionality connecting the method steps of ... “receiving astrological horoscope sign of a consumer” and “recommending to the consumer a beauty product” is critical or essential to the practice of the invention, but not included in the claims [and] ... not enabled by the disclosure.

The Examiner, however, failed to provide specific findings or cite any evidence to support the above allegations. For example, the Examiner provided no evidence, beyond pure conjecture, to support the allegation that “the connection between [an] *astrological horoscope sign* and a *beauty product* is not clear.”

In addition, according to M.P.E.P. § 2164.04, when doubt arises as to enablement because of missing information about essential parts or relationships between parts, “the examiner should specifically identify what information is missing and why one skilled in the art could not supply the information without undue experimentation.” References should be supplied if possible and specific technical reasons are required. *Id.* Here, the Examiner alleges that certain subject matter not included in the claims is “critical or essential” without providing any specific technical reasons and without showing why a skilled artisan could not supply that information without undue experimentation.

The Examiner cites no evidence concerning his bare allegation that the “[t]he functionality connecting the method steps of ... *receiving astrological horoscope sign of a consumer* and *recommending to the consumer a beauty product* is critical or essential.” In fact, the rejection does not indicate what functionality, specifically, the Examiner deems essential and missing from the claims. The Examiner also failed to show that a skilled artisan, considering the specification, could not make and use the claimed invention. Indeed, while alleging that Applicants’ claims are not enabled, the Examiner provides no explanation attempting to support that allegation.

For at least the above reasons, the Examiner has not satisfied the initial burden to establish a reasonable basis to question the enablement given the knowledge of skill in the art combined with the teachings and examples provided in the specification. That is to say, the Examiner has not provided adequate reasons or evidence to support, *prima facie*, that a skilled artisan could not make and use the invention without undue experimentation.

The lack of a *prima facie* showing notwithstanding, claims 1-69 are based on a disclosure that is enabling. The specification contains sufficient information to enable one reasonably

skilled in the pertinent art to make and use the claimed invention. For example, the specification provides examples (see e.g., pages 13-18 and 23-24) explaining how beauty guidance is provided using profile information and a subject's birth-related classification (e.g., astrological information). Further, the specification describes an exemplary operating environment in which the claimed invention can be implemented (see e.g., Fig. 5 and accompanying description). Contrary to the Examiner's allegation, the specification clearly discloses how astrological signs and beauty products can be related within the context of the claims. Further, the specification makes clear how astrological signs or other birth-related information can be used to provide beauty product recommendations.<sup>3</sup> Applicants call attention to M.P.E.P. § 2164.08(c), which states:

In determining whether an unclaimed feature is critical, the entire disclosure must be considered. Features which are merely preferred are not to be considered critical. *In re Goffe*, 542 F.2d 564, 567, 191 USPQ 429, 431 (CCPA 1976).

Limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing from a claim should be made only when the language of the specification makes it clear that the limitation is critical for the invention to function as intended. Broad language in the disclosure, including the abstract, omitting an allegedly critical feature, tends to rebut the argument of criticality.

The “functionality connecting” the features of “receiving information reflecting a classification relating to birth of the subject” and “providing guidance for the subject” is not omitted, but is expressed within the claim language. As M.P.E.P. § 2164.08(c) makes clear, Applicants are not required to limit the claims to preferred features in the absence of limiting prior art. Applicants

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<sup>3</sup> See fn 2.

submit that a skilled artisan, considering the teachings of the specification, could in fact make and use the claimed invention.

For at least the foregoing reasons, Applicants request withdrawal of the rejection of claims 1-69 under 35 U.S.C. § 112, first paragraph.

**V. Rejection of claims 1, 4-6, 9-15, 17-20, 24-27, 29-36, 43-47, 51-53, 56, 60-62, and 64-67 under 35 U.S.C. § 102(e)**

Applicants traverse the rejection of claims 1, 4-6, 9-15, 17-20, 24-27, 29-36, 43-47, 51-53, 56, 60-62, and 64-67 under 35 U.S.C. § 102(e) because *Maloney* does not anticipate these claims. In order to properly anticipate Applicants' claimed invention under 35 U.S.C. § 102(e), each and every element of the claim at issue must be found, either expressly described or under principles of inherency, in a single prior art reference. Further, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim[s]." *See* M.P.E.P. § 2131. Finally, "[t]he elements must be arranged as required by the claim." *Id.*

With regard to claim 1, *Maloney* does not teach or suggest at least the "providing guidance" feature. *Maloney* describes collecting "consumer profiling data," which includes "psychological, physiological and attitudinal information about the consumer" (pp. 6, 9). *Maloney* mentions that psychological and attitudinal information include "personality information, visual preferences, [and] expectation information" (page 9). Specifically, *Maloney* mentions collecting "preferred colors and styles, lifestyle, life stage, attitude, desired look of hair, desired look of face and level of involvement" (page 7). As the Examiner notes (OA at 4), with *Maloney*'s system, a user "is provided with a list of one or more products . . . that correspond to the consumer profiling category" (pgs. 7, 9).

Although *Maloney* mentions providing a list of products to a consumer based on a consumer profile category, the reference does not teach or suggest "providing guidance for the

subject, the guidance at least including beauty advice and being a function of at least some of the profile information and the birth-related classification,” as recited in claim 1. Even if *Maloney*’s customized list of products were consistent with the claimed “beauty advice,” *Maloney* does not teach or suggest that the list of products is “a function of at least some of the profile information and [a] . . . birth-related classification,” as claimed. Collecting physiological, psychological, and attitudinal information, as mentioned by *Maloney*, does not teach or suggest a “birth-related classification,” as recited in claim 1. For at least the foregoing reasons, *Maloney* fails to teach or suggest the “providing guidance” feature of claim 1.

Because *Maloney* does not teach or suggest each and every feature of claim 1, as a matter of law, it cannot anticipate this claim. As such, the rejection of claim 1 under 35 U.S.C. §102(e) based on *Maloney* should be withdrawn.

Each of claims 36, 59, and 67, although of different scope, recites subject matter similar to the “providing guidance” feature of claim 1. In particular, claim 36 recites, *inter alia*:

dispensing guidance including beauty advice, the guidance being a function of a birth-related classification of the subject and the at least one predefined category into which the subject is classified;

claim 59 recites, *inter alia*:

a component for providing guidance for the subject, the guidance at least including beauty advice and being a function of at least some of the profile information and the subject’s birth-related classification;

and claim 67 recites, *inter alia*:

providing guidance for the subject, the guidance at least including beauty advice and being a function of at least some of the profile information and a classification correlating to at least one of when and where the subject was born.

*Maloney* does not anticipate independent claims 36, 59, and 67 for at least reasons similar to those presented above in connection with claim 1.



Independent claim 53 recites, *inter alia*:

recommending at least one beauty product to the subject as a function of the birth-related classification of the subject and at least some of the received profile information.

Similar to claim 53, independent claim 56 recites, *inter alia*:

providing to a user of the second website a recommendation to use a beauty product offered for sale through the first website, the recommendation being a function of a birth-related classification of the user.

*Maloney* does not teach or suggest at least the above features. The Examiner rejected independent claims 53 and 56 for the same reasons presented for claim 1. Despite the Examiner's allegations, however, providing a list of products based on "psychological, physiological and attitudinal information about the consumer," as described by *Maloney*, is not consistent with recommending at least one beauty product as "a function of a birth-related classification," as recited in claims 53 and 56. Because *Maloney* does not teach or suggest each and every feature of claims 53 and 56, as a matter of law, it cannot anticipate these claims.

Each of claims 4-6, 9-15, 17-20, 24-27, 29-35, 43-47, 51, 52, 60-62, and 64-66 depends from independent claim 1, 36, or 59. *Maloney* fails to anticipate claims 4-6, 9-15, 17-20, 24-27, 29-35, 43-47, 51, 52, 60-62, and 64-66 for at least the same reasons as those discussed above for independent claims 1, 36, and 59.

Further, with regard to dependent claim 15, *Maloney* fails to teach or suggest "providing at least one prediction identified as being based on the birth-related classification," as claimed. Although *Maloney* mentions providing a list of products to a consumer, the reference does not disclose providing a "prediction," as recited in claim 15.

With regard to dependent claim 31, *Maloney* fails to teach or suggest "providing the subject with at least one prediction associated with the birth-related classification, and thereafter

providing beauty advice in response to a request by the subject.” Although *Maloney* mentions providing a list of products to a consumer, the reference does not disclose the above-noted “providing” feature.

Because claims 1, 4-6, 9-15, 17-20, 24-27, 29-36, 43-47, 51-53, 56, 60-62, and 64-67 are not anticipated by *Maloney*, the rejection of these claims under 35 U.S.C. § 102(e) should be withdrawn. Applicants thus request withdrawal of the rejection under 35 U.S.C. § 102(e) and the timely allowance of these claims.

**VI. Rejection of claims 2, 3, 7, 8, 16, 28, 37-42, 54, 55, 57, 58, 63, 68, and 69 under 35 U.S.C. § 103(a)**

Applicants traverse the rejection of claims 2, 3, 7, 8, 16, 28, 37-42, 54, 55, 57, 58, 63, 68, and 69 under 35 U.S.C. § 103(a) based on *Maloney* and *Shim* because *prima facie* obviousness has not been established with respect to these claims. To establish *prima facie* obviousness under 35 U.S.C. § 103(a), three requirements must be met. First, the applied references, taken alone or in combination, must teach or suggest each and every element recited in the claims. See M.P.E.P. § 2143.03 (8th ed. 2001). Second, there must be some suggestion or motivation, either in the reference(s) or in the knowledge generally available to one of ordinary skill in the art, to combine or modify the reference(s) in a manner resulting in the claimed invention. Third, a reasonable expectation of success must exist. Moreover, each of these requirements must “be found in the prior art, and not be based on applicant’s disclosure.” M.P.E.P. § 2143 (8th ed. 2001).

Independent claim 55 as currently presented recites, in part, “providing guidance for the subject, the guidance at least including beauty advice related to at least one beauty product and being a function of the subject’s astrological horoscope sign and at least some of the received

profile information.” For at least reasons similar to those noted above in connection with claim 1, *Maloney* does not disclose or suggest this feature of claim 55.

*Shim* fails to cure *Maloney*’s deficiencies. *Shim* is directed to Internet advertising (Abstract). In *Shim*’s system, advertisements are displayed to users “according to character type” (¶ 0201). As the Examiner notes, *Shim* mentions collecting information about “zodiac” signs and “when the user is born” (¶¶ 0175, 0180). *Shim* discloses that a user’s “character type” can be analyzed according to this collected information. *Shim* also mentions analyzing character using “fortune studies” (¶ 0181). *Shim* describes “creating user groups according to type, and classifying ... goods suited to the corresponding user groups ...” (¶ 0169). According to *Shim*, advertisements can be provided from “health and beauty clinics” and information about a “beauty salon” can be displayed (¶¶ 0052, 0207).

*Shim* does teach or suggest “providing guidance for the subject, the guidance at least including beauty advice related to at least one beauty product and being a function of the subject’s astrological horoscope sign and at least some of the received profile information,” as recited in claim 55. Targeting advertisements from beauty clinics, as mentioned by *Shim*, does not teach or suggest the “providing guidance” feature. Accordingly, neither *Maloney* nor *Shim*, nor any combination thereof, teaches or suggests each and every feature of claim 55. For at least this reason, *prima facie* obviousness has not been established with respect to this claim.

Each of claims 2, 3, 7, 8, 16, 28, 37-42, 63, 68, and 69 depends from one of base claims 1, 36, 59, and 67. For at least reasons similar to those presented above in connection with claims 1, 36, 59, and 67, claims 2, 3, 7, 8, 16, 28, 37-42, 63, 68, and 69 are not anticipated or rendered obvious by *Maloney*. Further, these claims are not anticipated or rendered obvious by *Maloney* in view of *Shim*. *Shim* does not teach or suggest “providing guidance for the subject, the

guidance at least including beauty advice and being a function of at least some of the profile information and the birth-related classification,” as recited in claim 1, and does not teach or suggest the related “guidance” features of claims 36, 59, and 67. Accordingly, neither *Maloney* nor *Shim*, nor any combination thereof, teaches or suggests the guidance subject as recited in claims 1, 36, 59, and 67 and therefore required by dependent claims 2, 3, 7, 8, 16, 28, 37-42, 63, 68, and 69. For at least this reason, *prima facie* obviousness has not been established with respect to these claims.

Claim 54 depends from base claim 53, and claims 57 and 58 depend from base claim 56. As explained above, *Maloney* does not teach or suggest recommending at least one beauty product as “a function of a birth-related classification,” as recited in independent claims 53 and 56 and also dependent claims 54, 57, and 58. Further, *Shim* does not disclose or suggest this feature. Neither *Maloney* nor *Shim*, nor any combination thereof, teaches or suggests each and every feature of claims 54, 57, and 58. For at least this reason, *prima facie* obviousness has not been established with respect to these claims.

Moreover, *prima facie* obviousness has not been established with respect to Applicants’ claims at least because the requisite motivation to combine *Maloney* and *Shim* is lacking. Determinations of obviousness must be supported by evidence on the record. See *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001) (finding that the factual determinations central to the issue of patentability, including conclusions of obviousness by the Board, must be supported by “substantial evidence”). The desire to combine references must be proved with “substantial evidence” that is a result of a “thorough and searching” factual inquiry. *In re Lee*, 277 F.3d 1338, 1343-1344 (Fed. Cir. 2002) (quoting *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52).

In this case, the Office Action provides no “substantial evidence” to support the attempted combination of *Maloney* and *Shim*. For example, the Examiner has not shown, by substantial evidence, that a skilled artisan considering the cited references, and not having the benefit of Applicants’ disclosure, would have been motivated to combine the references in a manner resulting in Applicants’ claimed combination. The Examiner merely provides a description of how *Shim* allegedly teaches certain features without a proper motive for combining *Shim* with *Maloney*.

The Examiner merely alleges that a skilled artisan would combine the references “because it would enhance the effectiveness of advertising ... beauty-related products” (OA at 6). This conclusory allegation is not properly supported by evidence on the record and does not establish that a skilled artisan would have been motivated to combine the references.

M.P.E.P. § 2143 specifies that the requirements for establishing *prima facie* obviousness must “be found in the prior art, and not be based on applicant’s disclosure.” M.P.E.P. § 2143 (8th ed. 2001). As M.P.E.P. § 2142 articulates:

Knowledge of applicant's disclosure must be put aside....  
[I]mpermissible hindsight must be avoided and the legal  
conclusion must be reached on the basis of the facts gleaned from  
the prior art.

Applicants submit that the conclusions in the Office Action pertaining to motivation were not reached based on facts gleaned from the cited references and that, instead, teachings of the present application were improperly used to reconstruct the references. Applicants submit that the conclusions in the Office Action constitute improper hindsight reasoning. For these additional reasons, *prima facie* obviousness has not been established.

Because the required motivation to combine *Maloney* and *Shim* is lacking, and since these references would not teach or suggest each and every claimed feature even if combined,

Applicants request withdrawal of the rejection of claims 2, 3, 7, 8, 16, 28, 37-42, 54, 55, 57, 58, 63, 68, and 69 under 35 U.S.C. § 103(a) and the timely allowance of these claims.

**VII. Rejection of claims 21-23 and 48-50 under 35 U.S.C. § 103(a)**

Applicants traverse the rejection of claims 21-23 and 48-50 under 35 U.S.C. § 103(a) based on *Maloney* and *Shim* for at least the following reasons.

Claims 21-23 depend from claim 1, and claims 48-50 depend from claim 36. As explained above, *Maloney* and *Shim* (whether taken alone or in combination) fail to teach or suggest each and every feature of independent claims 1 and 36. In addition, the requisite motivation to combine is lacking. For at least these reasons, the rejection of claims 21-23 and 48-50 under 35 U.S.C. § 103(a) should be withdrawn.

Further, the Examiner concedes that *Maloney* and *Shim* fail to disclose a prediction that “correlates a use of at least one specified beauty product with a predicted future occurrence” (OA at 7). In rejecting Applicants’ claims, however, the Examiner takes Official Notice that “it is well known to wear cosmetic products associated with zodiac signs to enhance [the] possibility of . . . certain events in the future (such as for ‘Good luck’).” The Examiner then alleges that a skilled artisan would have modified *Maloney* and *Shim* to include the missing feature “because said correlation would enhance the effectiveness of advertising said beauty-related products . . .” (OA at 7).

As noted above, the requisite motivation to combine *Maloney* and *Shim* is lacking. Further, even if these references were combined, the Examiner has not shown, by substantial evidence, that a skilled artisan considering the cited references, and not having the benefit of Applicants’ disclosure, would have been motivated to modify that combination further in a manner resulting in Applicants’ claimed combination. The Examiner merely provides a

description of how certain features are well-known without a proper motive for modifying *Shim* and *Maloney*.

In addition, Applicants call attention to the provisions of M.P.E.P. § 2144.03, the procedures set forth in the Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy dated February 21, 2002, and the precedents provided in *Dickinson v. Zurko*, 527 U.S. 150, 50 U.S.P.Q.2d 1930 (1999) and *In re Ahlert*, 424 F.2d, 1088, 1091, 165 U.S.P.Q. 418, 420 (CCPA 1970). An Official Notice rejection is improper unless the facts asserted are well-known or common knowledge in the art, and capable of instant and unquestionable demonstration as being well-known. Any facts asserted as well-known should serve only to “fill in the gaps” in an insubstantial manner. It is never appropriate to rely solely on “common knowledge” without evidentiary support in the record as the principal evidence upon which a rejection is based.

Applicants submit that the features recited in claim 21-23 and 48-50 are not unquestionably well-known and that the Office Action has failed to demonstrate the contrary. Stating that “it is well known to wear cosmetic products associated with zodiac signs” does not in and of itself establish that the elements of Applicants claims are in fact unquestionably well-known. As M.P.E.P. § 2144.03 makes clear, “[t]he standard of review applied to findings of fact is the “substantial evidence” standard under the Administrative Procedure Act (APA)” (citations omitted). M.P.E.P. § 2144.03 points out that “an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (citations omitted). The Office Action does not provide substantial evidence on the record showing that the elements of claims 21-23 and 48-50 were in fact unquestionably well-known.

Accordingly, Applicants expressly traverse the Official Notice and request that the Examiner either cite a competent prior art reference in substantiation of the conclusions in the Office Action, or else withdraw the rejection. To the extent the Examiner is relying on personal knowledge in alleging that certain features were well known, Applicants request that the Examiner provide an affidavit evidencing such knowledge as factually based and legally competent to support the Examiner's conclusions. *See* M.P.E.P. § 2144.03.

For at least the foregoing reasons, a *prima facie* case of obviousness has not been established with respect to claims 21-23 and 48-50. Applicants thus request withdrawal of the rejection of claims 21-23 and 48-50 under 35 U.S.C. § 103(a) and the timely allowance of these claims.

#### **VIII. Conclusion**


The claimed invention is neither anticipated nor rendered obvious in view of the references cited against this application. Applicants request the Examiner's reconsideration of the application in view of the foregoing, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: August 30, 2004

By:   
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